

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge

Modesto, California

**August 10, 2023 at 2:00 p.m.**

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1. <a href="#"><u>23-90103-E-7</u></a> <b>PORSCHA LEWALLEN</b> <a href="#"><u>23-9009</u></a> <b>CAE-1</b> <b>LEWALLEN V. UNITED STATES</b> <b>DEPARTMENT OF EDUCATION ET AL</b>	<b>STATUS CONFERENCE RE:</b> <b>COMPLAINT</b> <b>6-9-23 <a href="#"><u>[1]</u></a></b>
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Plaintiff's Atty: Jeffrey D. Rowe

Defendant's Atty: unknown

Adv. Filed: 6-9-23

Reissued Summons: 6/16/23

Answer: none

Nature of Action:

Dischargeability - student loan

Notes:

<b>The Status Conference is continued to 2:00 p.m. on <span style="color: red;">xxxxxxx</span> , 2023.</b>
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**SUMMARY OF COMPLAINT**

The Complaint filed by Porscha Lewallen ("Plaintiff-Debtor"), Dckt. 1, asserts claims for determination of dischargeability of a student loan debt. Plaintiff-Debtor asserts that based on her income and projected income, she has and will have no disposable income to pay the student loan debt obligations.

**SUMMARY OF ANSWER**

The U.S. Department of Education and NelNet, Inc. are the named defendants.

**August 10, 2023 at 2:00 p.m.**

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## Service of Summons and Complaint

A Reissued Summons was issued on June 16, 2023, (Dckt. 6) and Certificates of Service were filed on June 23, 2023. Dckts. 7, 8. The persons served are identified as the Chapter 7 Trustee, the U.S. Trustee, and:

US Department of Education  
Bankruptcy Section  
50 United Nations Plaza  
Mail Box 1200  
San Francisco, CA 94102

NelNet, Inc.  
Attn: Bankruptcy  
PO Box 82505  
Lincoln, NE 68501

The address for service on the U.S. Department of Education is the address as stated on the Roster of Governmental Agencies posted on this Court's webpage.

The Complaint identifies NelNet, Inc. as an entity organized under the laws of Nebraska, it is headquartered in Nebraska, and conducts business in California as the loan servicer for the student loan obligation.

The court's review of the California Secretary of State website for business search of entities registered to do business in California did not produce information for a business named "NelNet, Inc." <https://bizfileonline.sos.ca.gov/>. However, it does show the following entities and their status for doing business in California:

Entity	Status	Address	Registered Agent
NelNet Corporate Services, Inc.	Terminated	Nevada Corporation	N/A
NelNet Government Services, LLC	Active	121 S. 13 <sup>th</sup> Street, Suite 100 Lincoln NE 68508	1505 Corporation CT Corporation Systems
NelNet Servicing, LLC	Active	121 S. 13 <sup>th</sup> Street, Suite 100 Lincoln NE 68508	1505 Corporation CT Corporation Systems

Going to the Nebraska Secretary of State Website, there is an entity named NelNet, Inc., with the address 121 S. 13TH STREET, SUITE 100 LINCOLN, NE 68508, with an active Status registered to do business. It's registered agent is C T CORPORATION SYSTEM 5601 SOUTH 59TH STREET SUITE C LINCOLN, NE 68516. <https://www.nebraska.gov/sos/corp/corptestsearch.cgi?acct-number=0425737>. This may be the entity who is the named defendant, even though it is not registered to do business in California.

Federal Rule of Bankruptcy Procedure 7004 governs service of process by First Class Mail in an adversary proceeding. For service on a corporation, Federal Rule of Bankruptcy Procedure 7004(b)(3) requires:

(b) Service by first class mail. Except as provided in subdivision (h), in addition to the methods of service authorized by Rule 4(e)–(j) F.R.Civ.P., service may be made within the United States by first class mail postage prepaid as follows:

...

(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant

Here, the Summons and Complaint were not addressed to the attention of an officer, managing or general agent, or other authorized agent to receive service. Recognizing that officers may change, this court has allowed such service to be sent to the corporate headquarters, addressed to the corporations, and stating: “Attn: Officer or Agent for Service of Process.” Unless authorized by the person to receive the notice, mailing to a post office box does not comply with the Rule 7004 service requirements. *See Beneficial Cal., Inc. V. Villar (In re Villar)*, 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004).

Additionally, Rule 7004 also requires that in addition to serving the U.S. agency or department, service must also be made on the U.S. Attorney for the District in which the action is filed and the Attorney General:

(4) Upon the United States, by mailing a copy of the summons and complaint addressed to the civil process clerk at the office of the United States attorney for the district in which the action is brought and by mailing a copy of the summons and complaint to the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or an agency of the United States not made a party, by also mailing a copy of the summons and complaint to that officer or agency. The court shall allow a reasonable time for service pursuant to this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the United States if the plaintiff has mailed a copy of the summons and complaint either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States.

Fed. R. Bankr. P. 7004(b)(4).

At the Status Conference, **XXXXXXX**

Debtors' Atty: Matthew D. Resnik; Roksana D. Moradi-Brovia

Notes:

Continued from 6/15/23

Operating Reports filed: 6/21/23; 7/20/23

Debtors' Chapter 11 Case Status Report filed 7/27/23 [Dckt 127]

<b>The Status Conference is continued to 2:00 p.m. on <span style="color: red;">XXXXXXX</span> , 2023.</b>
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#### **AUGUST 8, 2023 STATUS CONFERENCE**

On July 27, 2023, the Debtor in Possession filed an updated Status Report for this Case. Dckt. 127. With respect to the marketing and lease of the Calabasas property, the Debtor in Possession reports that pursuant to this court's order, they have retained COMPASS Real Estate - Beverly Hills for that purpose.

At the Status Conference, XXXXXXX

#### **JUNE 15, 2023 STATUS CONFERENCE**

On June 1, 2023, the Debtor in Possession filed an updated Status Report. Dckt. 101. For the Southern California Property, the Debtor in Possession reports that they are still trying to get it lease and will be seeking authorization to employ a new agent and broker. The Turlock Property is currently being leased, debtor Ramil Abalkhad no longer residing there.

Mr. Abalkhad continues with his business as a self-employed credit counselor. Mrs. Abalkhad is now licensed as a real estate agent, but has not closed any sales yet. Mrs. Abalkhad no longer resides in the Calabassas Property.

Since the prior Status Conference, current counsel for the Debtor in Possession has worked with the Debtors and the Debtor in Possession to bring this case in compliance with the rules and the law. The Debtor in Possession believes that has been accomplished.

On April 28, 2023, the Trustee in the RJ Financial Bankruptcy Case filed a complaint in this Bankruptcy Case seeking to have obligations of the Debtors determined nondischargeable and for the Debtors to be denied a discharge.

The Debtor in Possession will file a proposed plan and disclosure statement when they have a tenant, and the corresponding income from, the Calabassas Property.

### **Amended Schedules**

The Debtors' Amended Schedules were filed on May 16, 2023. Dckt. 98. The substantial portion of their asset value is in the two real properties. On Schedule D, Debtors list (\$10,113,375) +/- as claims secured by the Calabassas Property (some of the judgment debt and liens as listed as disputed). On Schedule A/B, Debtors list this property as having a value of \$2.5MM. On Schedule C (Dckt. 1), Debtors claim homestead exemptions in both the Calabassas Property and the Turlock Property.

At the Status Conference, counsel for the Debtor in Possession reported that the employment application will be filed for family law counsel. The U.S. Trustee reports that the First Meeting of Creditors has been concluded. However, Debtor has not been successful in leasing the property.

### **MARCH 9, 2023 STATUS CONFERENCE**

This voluntary Chapter 11 case was filed on January 27, 2023. The Debtor in Possession in possession filed a Status Report on February 23, 2023. Dckt. 34. Counsel for the Debtor in Possession reports that title reports are being obtained to insure that all possible secured claims are identified. It appears at this time there may be only one secured claim, and that a motion to value is in the offing.

The Debtor in Possession is working to get the monthly operating reports filed, having obtained the court authorized services of a CPS to assist.

The court notes that two applications to employ professional have been filed, but no orders have been entered. In reviewing the court's proposed order inbox, the court does not see proposed orders having been uploaded. These applications have been set for hearing on March 9, 2023.

Looking at Schedule A/B, the most significant asset is real property located in Calabassas, California, which is identified as a single-family home with a value of \$2.5 Million and in which Debtor asserts a homestead exemption. Dckt. 33.

On Schedule D Debtor lists creditors having secured claims against the Calabassas property totaling approximately (\$11,575,000), a portion of which is also secured by real property located in Turlock, California. General unsecured claims totaling approximately (\$461,000) are listed on Schedule F.

Interspersed in the Schedules are forms from the Central District of California and some of the forms stated that they are for filing a case in the Central District of California.

At the Status Conference, counsel for the Debtor in Possession addressed these shortcomings, assuring the court that counsel and his staff are reviewing the Local Rules

3. [13-90435-E-7](#) SEAN AMIN  
[23-9010](#) CAE-1  
NEVAREZ V. ELLIOTT ET AL

STATUS CONFERENCE RE: NOTICE OF  
REMOVAL  
6-13-23 [1](#)

Plaintiff's Atty: unknown

Defendant's Atty:

David C. Johnston [Sean Afshin Amin]

Unknown [Kevin Amin; California Shade, Inc.; David Elliott]

Adv. Filed: 6/13/23

Answer: none

Nature of Action:

Declaratory judgment

Notes:

Pleadings in Removed Case filed 6/13/23 [Dckt 6]

<b>The Status Conference is <span style="color: red;">XXXXXXX</span></b>
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#### **AUGUST 10, 2023 STATUS CONFERENCE**

On June 13, 2023, Debtor-Defendant Sean Afshin Amin filed a Notice of Removal of this State Court Action. Dckt. 1. In the State Court Action Defendant-Debtor has been sued for an obligation that is asserted to have been discharged in his 2013 Chapter 7 Bankruptcy Case. Defendant-Debtor seeks now to not only defend the State Court Action based on his having obtained a discharge, but to also assert that the naming of Defendant-Debtor in the State Court Action violates the Discharge Injunction, and he will seek damages relating thereto.

The Ninth Circuit has addressed the enforcement of the Discharge Injunction, treating it as a statutory injunction for which the violation may be sought and the injunction enforce by “simple” motion for contempt rather than an adversary proceeding. *Barriento v. Wells Fargo Bank, N.A.*, 633 F.3d 1186, 1189-1191 (9th Cir.2011); *ZiLOG, Inc. V. Corning (In re ZiLOG, Inc.)*, 450 F.3d 996, 1007 (9th Cir. 2006); *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502 (9th Cir. 2002). *See also, Bayati v. Musharbash (In re Bayati)*, 2015 Bankr. LEXIS 3624 (B.A.P. 9th Cir. 2015), discussing when additional relief to the “mere” violation of the automatic stay would require an adversary proceeding.

At the Status Conference, XXXXXXX

August 10, 2023 at 2:00 p.m.

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**SUBCHAPTER V**

Debtor's Atty: David C. Johnston

Notes:

[DCJ-1] Debtor's Application for 14 Additional Days to File New Case Documents filed 7/10/23 [Dckt 15];  
Order granting filed 7/11/23 [Dckt 20]

[DCJ-2] Application of Debtor in Possession for Authority to Employ Attorney filed 7/20/23 [Dckt 24];  
Order granting filed 7/21/23 [Dckt 27]

Debtor's Chapter 11 Status Report filed 7/27/23 [Dckt 32]

<b>The Status Conference is continued to 2:00 p.m. on <span style="color: red;">XXXXXXX</span> , 2023.</b>
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This voluntary Chapter 11 Subchapter V cases was filed by Brunk Industries, the Debtor/Debtor in Possession, on June 26, 2023. The Debtor/Debtor in Possession filed its Status Report on July 27, 2023. Dckt. 32. It reports that the Debtor/Debtor in Possession is working to assemble various "small business documents" for the Subchapter V Trustee, but that process has been inhibited by the illness of the bookkeeper for the Debtor/Debtor in Possession.

As of the filing of the Status Report, the Debtor's contractor's license had been suspended due to unpaid "prevailing wage" claims, but with the filing of this Chapter 11 Case, the Debtor/Debtor in Possession anticipates that it will be promptly reinstated.

At the Status Conference, XXXXXXX

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 7, 2022. By the court's calculation, 50 days' notice was provided. 42 days' notice is required.

The Confirmation of Plan of Reorganization has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Confirmation of Subchapter V Plan of Reorganization is XXXXXX**

The Plan Proponent has complied with the Service and Filing Requirements for Confirmation:

November 27, 2022 Plan to be filed by December 7, 2022

January 9, 2023 Last Day to File Objections to Confirmation

January 19, 2023 Last Day to File Replies to Objections, Tabulation of Ballots,  
Proof of Service

#### Table of Classes

Creditor/Class	Treatment
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Class 1: Priority Claims Except Administrative Expense and Priority Tax Claims	<b>Claim Amount</b>	Unknown
	<b>Impairment</b>	Unimpaired
	Debtor is not aware of any Class 1 Priority Claims. Any Class 1 Priority Claim will be paid in full, in cash, upon the effective date.	
Class 2: Ally Financial	<b>Claim Amount</b>	\$3,712.79, Proof of Claim 2-1.
	<b>Impairment</b>	Unimpaired
	Will be paid according to the original documents with no modification under the Plan.	
Class 3: Farmers & Merchants Bank	<b>Claim Amount</b>	Unknown, Debtor does not indicate the total amount of these claims.
	<b>Impairment</b>	Unimpaired
	Will be paid according to the original loan documents with no modification under the Plan.	
Class 4: Kia Finance America	<b>Claim Amount</b>	\$16,496.99, Proof of Claim 7-1.
	<b>Impairment</b>	Unimpaired
	Will be paid according to the original loan documents with no modification under the Plan.	
Class 5: Kia Finance America	<b>Claim Amount</b>	\$16,186.26, Proof of Claim 6-1.
	<b>Impairment</b>	Unimpaired
	Will be paid according to the original loan documents with no modification under the Plan.	
Class 6: Toyota Motor Credit Corporation	<b>Claim Amount</b>	\$6,281.00, Schedule D § 2.4, Dckt. 25.
	<b>Impairment</b>	Unimpaired
	Will be paid according to the original loan documents with no modification under the Plan.	
Class 7: Non-Priority Unsecured Claims	<b>Claim Amount</b>	Unknown, Debtor does not indicate the total amount of these claims.
	<b>Impairment</b>	Unimpaired
	Paid in full, with an interest at the rate of 3.33% per annum from the petition date, in cash on the effective date.	

Class 8: Equity Security Holders	<b>Claim Amount</b>	Unknown, Debtor does not indicate the total amount of these claims.
	<b>Impairment</b>	Unimpaired
	Holders of interests in this class will retain their shares without modification.	
Administrative Expense Claims	<b>Claim Amount</b>	Estimated \$12,500, Plan, Dckt. 50.
	Shall be paid upon the effective date in cash when the court allows through a noticed motion.	
Priority Tax Claims	<b>Claim Amount</b>	Estimated \$0
	Shall be paid upon the effective date in cash with interest.	

No declaration has been filed in support of the Motion to provide evidence of compliance with the necessary elements for confirmation in 11 U.S.C. § 1129.

### **Opposition to Plan**

Creditor Hyundai Capital America dba Kia Motors Finance (“Creditor”), holding a secured claim, filed an opposition on January 9, 2023. Dckt. 58. However, on March 16, 2023, Creditor withdrew their opposition, stating Debtor cured the post-petition default and has remained current on post-petition payments.

### **DISCUSSION**

Federal Rule of Bankruptcy Procedure 3020(b)(2) states:

The court shall rule on confirmation of the plan after notice and hearing as provided in Rule 2002. If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.

Here, the court has not been provided enough evidence to determine the Plan has been proposed in good faith and not by any means forbidden by law. Additionally, to determine whether the proposed Plan is feasible.

In the Subchapter V Plan the Debtor/Debtor in Possession states:

In 2021, the Debtor had gross revenues of \$6,881,398 and total expenses of \$6,273,285, for a net profit of \$612,675. Clearly, the very modest payments on five secured claims will be feasible and will not require further reorganization.

Sub V Plan, p. 3:22-24; Dckt. 50. While Debtor/Debtor in Possession asserts this conclusion, it is not one the court is able to make.

### **Request for Further Continuance**

On April 3, 2023, the Debtor/Debtor in Possession filed a Notice of Inability to Proceed with the confirmation hearing and requested a further continuance. Dckt. 9. In the Notice and Request, the Debtor/Debtor in Possession notes for the court (identified by paragraph number in the Notice and Request):

5. The Plan calls for a 100% dividend on all claims. Based on the November 7, 2022 bar date for non-governmental claims, there were no general unsecured claims.

6. On December 7, 2022, one month after the Bar Date, two unsecured claims were filed, each in the amount of \$594,140.28, by Melissa Comfort (formerly Miller) and Preston Miller. A review of these claims reveals they are based on a 2012 Settlement Agreement. The Debtor/Debtor in Possession asserts that in addition to being untimely, these obligations would be dependant on the two claimants paying the SBA obligation.

7. On January 3, 2023, the SBA filed a timely general unsecured claim for \$684,546.81. The Debtor/Debtor in Possession asserts that the claim is barred by the statute of limitations and other defenses.

At the Confirmation Hearing, counsel for the Debtor/Debtor in Possession and counsel for Comfort and Miller addressed the need to proceed with an objection to the claim of the SBA, and that they appreciated the need to move forward promptly on that. The court raised the question whether, in light of Miller and Comfort being the obligors on the SBA note, the Debtor having given a personal guaranty, and the Settlement Agreement providing for reimbursement of Miller and Comfort, whether an objection to claim proceeding should include Miller and Comfort so that one final court ruling was issued that was consistent for all the parties in interest.

### **Stipulation of Creditors**

#### **Melissa Comfort and Preston Miller**

Debtor and Creditors Melissa Comfort and Preston Miller (“Creditors”) filed a Stipulation on July 27, 2023. Dckt. 120. Creditors stipulation that their Claims, Claim 3-1 and 4-1, will be combined into one general unsecured claim in the amount of \$200,000 (“Contingent Claim”). In addition, Debtor’s Plan shall be modified to provide:

1. Debtor or successor will reimburse Creditors 50% of any voluntary or involuntary payment the Creditors make to the SBA or US Department of Treasury, provided the total allowed Claim shall not exceed \$200,000.
2. Payments on the Contingent Claim shall be paid to the Creditors by Debtor or its successor as follows:
  - a. 1/3 of the reimbursement within 30 days of proof of payment presented to Debtor by Creditors;

- b. 1/3 within one year of the initial payment; and
  - c. Final 1/3 payment within two years after the date of the initial payment.
3. All payments shall be jointly payable to Creditors at the address included in the reimbursement request of Creditors.

Creditors will accept the Plan if the above provisions are included in the order confirming.

No order approving any compromise between the Debtor/Debtor in Possession and these two Creditors has been issued by the court. It appears that the “Stipulation” is a confirmation by the two Creditors that their claims overlap and that they do not oppose the Subchapter V Plan if amended to provide for the payment of their \$200,000 claim.

### **August 10, 2023 Hearing**

On August 3, 2023, the Debtor/Debtor in Possession filed the Tabulation of Ballots, which are summarized as follows:

<b>Class and Creditor</b>	<b>Ballots</b>
Class 1 - Priority Claim Unimpaired Class	No Ballots
Class 2 - Ally Financial Secured Claim Unimpaired Class	No Ballots
Class 3 - Farmers & Merchant’s Bank Secured Claim Unimpaired Class	No Ballots
Class 4 - Kia Finance America Secured Claim Unimpaired Class	No Ballots
Class 5 - Kia Finance America Secured Claim Unimpaired Class	No Ballots
Class 6 - Toyota Motor Credit Corporation Secured Claim Unimpaired Class	No Ballots
Class 7 - General Unsecured Claims Impaired Class	Acceptances: 2 Ballots for (\$400,000) in claims  Rejections: None
Class 8 - Equity Interests Unimpaired	No Ballots

Confirmation of a Subchapter V plan is governed by 11 U.S.C. § 1191, which provides in pertinent part:

§ 1191. Confirmation of plan

(a) Terms. The court shall confirm a plan under this subchapter only if all of the requirements of section 1129(a), other than paragraph (15) of that section, of this title are met.

(b) Exception. Notwithstanding section 510(a) of this title, if all of the applicable requirements of section 1129(a) of this title, other than paragraphs (8), (10), and (15) of that section, are met with respect to a plan, the court, on request of the debtor, shall confirm the plan notwithstanding the requirements of such paragraphs if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

Continuing to 11 U.S.C. § 1129(a), it provides:

§ 1129. Confirmation of plan

(a) The court shall confirm a plan only if all of the following requirements are met:

(1) The plan complies with the applicable provisions of this title.

(2) The proponent of the plan complies with the applicable provisions of this title.

(3) The plan has been proposed in good faith and not by any means forbidden by law.

(4) Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.

(5)

(A)

(I) The proponent of the plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan; and

(ii) the appointment to, or continuance in, such office of such individual, is consistent with the interests of

creditors and equity security holders and with public policy; and

(B) the proponent of the plan has disclosed the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider.

(6) Any governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval.

(7) With respect to each impaired class of claims or interests—

(A) each holder of a claim or interest of such class—

(i) has accepted the plan; or

(ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date; or

(B) if section 1111(b)(2) of this title applies to the claims of such class, each holder of a claim of such class will receive or retain under the plan an account of such claim property of a value, as of the effective date of the plan, that is not less than the value of such holder's interest in the estate's interest in the property that secures such claims.

(8) With respect to each class of claims or interests—

(A) such class has accepted the plan; or

(B) such class is not impaired under the plan.

(9) Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that—

(A) with respect to a claim of a kind specified in section 507(a)(2) or 507(a)(3) of this title, on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;

(B) with respect to a class of claims of a kind specified in section 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of this title, each holder of a claim of such class will receive—

(I) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim;

(C) with respect to a claim of a kind specified in section 507(a)(8) of this title, the holder of such claim will receive on account of such claim regular installment payments in cash—

(I) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;

(ii) over a period ending not later than 5 years after the date of the order for relief under section 301, 302, or 303; and

(iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122(b)); and

(D) with respect to a secured claim which would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8), but for the secured status of that claim, the holder of that claim will receive on account of that claim, cash payments, in the same manner and over the same period, as prescribed in subparagraph (C).

(10) If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider.

(11) Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

(12) All fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan.

(13) The plan provides for the continuation after its effective date of payment of all retiree benefits, as that term is defined in section 1114 of this title, at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of this title, at any time prior to confirmation of the plan, for the duration of the period the debtor has obligated itself to provide such benefits.

(14) If the debtor is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, the debtor has paid all amounts payable under such order or such statute for such obligation that first become payable after the date of the filing of the petition.

(15) In a case in which the debtor is an individual and in which the holder of an allowed unsecured claim objects to the confirmation of the plan—

(A) the value, as of the effective date of the plan, of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the value of the property to be distributed under the plan is not less than the projected disposable income of the debtor (as defined in section 1325(b)(2)) to be received during the 5-year period beginning on the date that the first payment is due under the plan, or during the period for which the plan provides payments, whichever is longer.

(16) All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.

The evidence provided by the Debtor/Debtor in Possession for the court to make the necessary factual determinations for the above required grounds, consisting of **XXXXXXX**

At the hearing, **XXXXXXXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.



The hearing on the Motion for Confirmation of the Subchapter V Plan filed by Provident Care, Inc. having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Confirmation of Subchapter V Plan of Reorganization is **XXXXXXXXXX**

6. [22-90296-E-11](#)      **PROVIDENT CARE, INC.**  
[CAE-1](#)

**CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
8-29-22 [1]**

**SUBCHAPTER V**

Plaintiff's Atty: David C. Johnston

Notes:

Continued from 6/15/23

Operating Reports filed: 7/31/23 [May], 7/31/23 [Jun]

Stipulation Regarding Treatment Under Debtor's Plan and Allowing Claims of Creditors Melissa Comfort and Preston Miller as Contingent Claims filed 7/24/23 [Dckt 120]

<b>The Status Conference is <b>XXXXXXX</b></b>
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### **AUGUST 10, 2023 STATUS CONFERENCE**

At the Status Conference, **XXXXXXX**

# FINAL RULINGS

7. [23-90111-E-11](#)      MICHAEL HOFMANN      STATUS CONFERENCE RE: AMENDED  
[23-9007](#)      CAE-1      COMPLAINT  
HOFMANN V. WAGNER      5-24-23 [\[6\]](#)

**ADVERSARY PROCEEDING**  
**DISMISSED: 7/17/23**

**Final Ruling: No appearance at the August 10, 2023 Status Conference is required.**

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Plaintiff's Atty: Brian S. Haddix  
Defendant's Atty: unknown

Adv. Filed: 5/23/23  
Answer: none

Amd Complaint: 5/24/23  
Reissued Summons: 5/25/23

Nature of Action:  
Validity, priority or extent of lien or other interest in property  
Injunctive relief - imposition of stay  
Declaratory judgment

Notes:  
Order to Show Cause sustained, Adversary Proceeding dismissed filed 7/17/23 [Dckt 14]

The Adversary Proceeding having been dismissed pursuant to prior order of the court (Dckt. 14), **the Status Conference is concluded and removed from the Calendar.**